

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Alearis, Inc.,

Plaintiff,

v.

The United States,

Defendant.

Case No.: 1:20-cv-00808-LKG

Honorable Lydia K. Griggsby

**PLAINTIFF’S MOTION FOR ORDER DIRECTING DEFENDANT
TO FILE ADMINISTRATIVE RECORD BY OCTOBER 15, 2020**

Plaintiff Alearis, Inc. (“Alearis”), through its undersigned counsel, respectfully moves the Court pursuant to Rule 51.2 (a)-(b) of the Rules of the United States Court of Federal Claims (“RCFC”), to order defendant, United States, to file the administrative record in this case on or before October 15, 2020. The court should so direct defendant so as to enable Alearis, if it chooses to do so, to file a motion for judgment on the administrative record at an early stage of this case. In further support of this motion, Alearis states as follows:

1. Alearis filed this action on July 2, 2020 because (a) on July 12, 2019, it filed a Request for Determination with the United States Internal Revenue Service (“Service”) requesting classification as a non private foundation described by Internal Revenue Code (“IRC”) §§ 509(a)(1) and 170(b)(1)(A)(i); (b) the Service failed to respond to Alearis’ Request for Determination as of July 2, 2020, the date Alearis commenced this action; and (c) IRC § 7428(a) provides for judicial relief upon the Service’s failure to respond to a Request for Determination of foundation classification within 270 days (which expired on April 18, 2020).

2. Pursuant to RCFC 12(a)(1)(A), defendant’s response to Alearis’ Complaint in this action was due on August 31, 2020. On August 25, 2020, defendant requested that Alearis consent to a 60-day enlargement of defendant’s time to respond to the Complaint (until October 30, 2020). Alearis agreed to the extension, and simultaneously requested

1 that defendant agree to file the administrative record in this case by October 15, 2020.

2 Defendant would not agree to do so.

3 3. By order dated August 28, 2020 (ECF No. 11), this Court granted defendant's
4 unopposed motion for a 60-day enlargement of time within which defendant may respond
5 to the Complaint.

6 4. Alearis now moves this Court to order filing of the administrative record by
7 October 15, 2020.

8 5. RCFC 52.1(a) provides that where "proceedings before an agency are relevant
9 to a decision in a case, the administrative record of those proceedings must be certified by
10 the agency and filed with the court."

11 6. Pursuant to RCFC 52.1(b), this court has discretion to establish a time for
12 filing the administrative record.

13 7. RCFC 52.1(c)(3) provides that a motion for judgment on the administrative
14 record obviates the requirement for the filing of an answer under RCFC 12(a)(1).
15 Therefore, the sixty-day extension for defendant to respond to the Complaint should not
16 forestall or delay Alearis' opportunity to seek statutory relief.

17 8. Alearis wishes to advance this case at a reasonable pace—especially since this
18 action was initiated in response to the Service's failure to respond to Alearis' Request for
19 Determination. As of the filing of this motion, 424 days have passed since Alearis made
20 its initial request to the Service for non private foundation classification.

21 9. The administrative record in this case is not extensive. Communication
22 between Alearis and the Service consists only of (a) Alearis' Request for Determination,
23 (b) the receipt from the Service indicating the date it had received the Request for
24 Determination, (c) three phone calls between Alearis and the Service, and (d) one
25 facsimile sent by Alearis to the Service, which substantially consisted of the Request for
26 Determination.

1 10. Consequently, the documents which should comprise the administrative
2 record are contained in Exhibit A-C to the Complaint. It would not be a burden on
3 defendant to file the administrative record (which, presumably, its counsel has already
4 reviewed in preparation of responding to the Complaint) by October 15, 2020—
5 approximately 105 days after the commencement of this case.

6 11. On July 8, 2020, the Court entered an order (ECF No. 6) granting Alearis’
7 Motion for Leave to File Under Seal Parts of Exhibit A to Complaint. Exhibit A to the
8 Complaint consists of the bulk of the administrative record. Therefore, it is appropriate
9 that, when defendant files the administrative record, it do so under seal. Defendant may
10 file the redacted versions of the administrative record (*i.e.*, the portions of Exhibits A-C
11 to the Complaint that are in the public record) in the public file.

12 12. A proposed Order is attached.

13 WHEREFORE, Plaintiff Alearis, Inc. respectfully requests that this Court enter an
14 order (a) directing defendant United States of America to file the administrative record in
15 this case on or before October 15, 2020, (b) directing that such filing be under seal; and
16 (c) granting such further relief as this Court deems proper.

17
18 Date: September 8, 2020

ALEARIS, INC.

19 By: /s/ Mitchell Bryan
20 One of its Attorneys

21
22 Mitchell Bryan
23 Williams, Bax & Saltzman, P.C.
24 221 North LaSalle Street, Suite 3700
25 Chicago, IL 60601
26 (312) 372-3311
27 bryan@wbs-law.com

1 Bradley Block
2 Law Offices of Bradley Block
3 318 West Adams Street, 17th Floor
4 Chicago, IL 60606
5 (224) 533-1075
6 brad.block@bradblocklaw.com

7 Bruce de'Medici
8 de'Medici Law
9 834 Forest Avenue
10 Oak Park, Illinois 60302
11 (312) 731-6778
12 bdemedici@bdeamlaw.com

13 Paul Winters
14 Wagenmaker & Oberly, LLC
15 53 West Jackson Blvd.
16 Chicago, IL 60604
17 (312) 626-1600
18 paul@wagenmakerlaw.com
19
20
21
22
23
24
25
26
27

